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BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 582
(Sub-No. 1)



MAJOR RAIL CONSOLIDATION PROCEDURES
Notice of Proposed Rulemaking by the Surface
Transportation Board to Modify its Regulations
at 49 CFR Part 1180 Governing Proposals for
Major Rail Consolidations

REBUTTAL COMMENTS OF CONSUMERS
UNITED FOR RAIL EQUITY

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DATED: January 11, 2001



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REBUTTAL COMMENTS OF CONSUMERS UNITED FOR RAIL EQUITY

Pursuant to the Surface Transportation Board's (STB) October 3, 2000 issuance of proposed rules, Consumers United for Rail Equity (CURE), submits rebuttal comments concerning major rail consolidation procedures.

CURE is a coalition of rail shippers, including public power generators, rural electric cooperatives, investor owned electric utilities, coal producers, chemical and petrochemical companies, that rely on rail transportation but are sometimes "captive" to a single railroad for at least some of their rail movements.¹ CURE advocates federal

¹ CURE's membership includes the following: Algona Municipal Utilities; American Electric Power Service Corporation; American Public Power Association; Arizona Electric Power Cooperative; Arkansas Electric Cooperative Association; Buckeye Power, Inc; Camelot Coal Company; Carolina Power and Light Company; Consumers Energy Company; Dairyland Power Cooperative; Duke Energy Company; Edison Electric Institute; Empire District Electric Company; Entergy Services, Inc.; Ethyl Corporation; Kansas City Power and Light Company; Minnesota Power; Municipal Electric Systems of Oklahoma; National Rural Electric Cooperative Association; Nebraska Public Power District; The Ohio Valley Coal Company; Potomac Electric Power Company; and Shawnee Coal Company.

policies that will promote competition and increase efficiencies in the rail industry.

CURE has carefully reviewed all comments submitted in this rulemaking.

Nothing in the reply comments causes us to change the positions that we have held and the recommendations that we have made throughout this proceeding. CURE continues to believe that the STB's proposed rules, while well intentioned, fall far short of protecting the public interest.

CURE again requests that the STB develop clearly defined rules that promote effective rail competition, both within the merger context, and as a matter of general application. A more expansive approach is necessary to effectively address the concerns repeatedly raised by rail shippers, to promote a more robust, competitive rail industry, and to meet the principal goals of the Staggers Rail Act.

After a full review of the initial and reply comments filed in this rulemaking, CURE asks the STB to issue final merger rules that accomplish the following:

2. The STB should adopt stronger merger review guidelines that evaluate each merger's impact on competition and that apply the following requirements as a precondition to future mergers or consolidations between major railroads:
 - a. A demonstration that an increase in competitive options will be available to shippers following a merger;
 - b. A requirement that no merger will be approved that reduces transportation alternatives available to current railroad customers, including an analysis beyond any "bottleneck" affecting a rail shipper;
 - c. A requirement that no merger will be approved that fails to provide

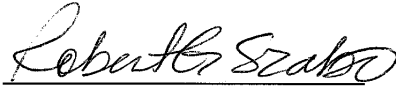
additional options and enhanced service for railroad customers;

2. The STB should reverse its current policy regarding "bottlenecks" and adopt a new policy requiring railroads to quote a rate between any two points on its system where traffic can originate or be interchanged;
3. The STB should affirmatively grant the right of Class I and small railroads to interchange at terminal areas and interchange points without being disadvantaged in any way in terms of operations or pricing; and
4. The STB should eliminate all "paper barriers" that arbitrarily restrict full interchange rights for Class II and III railroads.

CURE believes strongly that these changes to STB policy should be adopted both as a condition to future major rail mergers, and as general regulatory policy for all major railroads. The voluminous record established in this proceeding by shippers, state and federal agencies, short line and regional railroads and others favor a change in rail policy in this direction.

In closing, CURE asks the STB to issue final rules in this proceeding that clearly and unequivocally make effective competition the centerpiece of this Nation's rail policy. Merger policy aimed at enhancing competition, rules that allow competitive rail opportunities to develop for captive shippers, and policies that create healthy, viable regional railroads throughout the U.S. are all necessary components to a rational, forward looking national rail policy. We hope that this rulemaking will prove to be a first step in that direction.

Respectfully Submitted,



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January 11, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of all filings submitted so far in this proceeding by the Consumers United for Rail Equity upon each person added to the official service list compiled by the Secretary in this proceeding by first-class mail, postage pre-paid.

Dated at Washington, DC this 11th day of January, 2001

A handwritten signature in black ink, appearing to read 'J. Curtis Rich', written over a horizontal line.

Mr. J. Curtis Rich

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